

4.0 Consultation, Permit and Review Requirements

4.1 National Environmental Policy Act

This EA is being prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et. seq.*) and the Council of Environmental Quality (CEQ) Implementing Regulations, which require federal agencies to assess the impacts that their proposed actions may have on the environment. Based on information in the EA, BPA would determine whether the proposal significantly affects the quality of the human environment. If it does, an Environmental Impact Statement is required. If it is determined that the proposal would not have significant impacts, a Finding of No Significant Impact (FONSI) would be prepared.

4.2 Threatened and Endangered Species and Critical Habitat

The Endangered Species Act (ESA) of 1973 (16 U.S.C. 1536) as amended in 1988, establishes a national program for the conservation of threatened and endangered (T&E) species of fish, wildlife, and plants and the preservation of the ecosystems on which they depend.

The ESA is administered by the U.S. Fish and Wildlife Service and, for salmon and other marine species, by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service. Section (7a) requires federal agencies to ensure that the actions they authorize, fund, and carry out do not jeopardize endangered or threatened species or their critical habitats.

See Sections 3.9, Vegetation and 3.1, Fish and Wildlife for a discussion of the federally-listed species and the potential impacts to these species. BPA has consulted with the USFWS. The USFWS concurred with BPA's determination that the proposed project is "not likely to adversely affect" the listed species in the area (USFWS, May 16, 2005). No salmon or other marine species would be affected, so the National Oceanic and Atmospheric Administration, National Marine Fisheries Service was not consulted.

4.3 Fish and Wildlife Conservation

The Fish and Wildlife Conservation Act of 1980 (16 USC 2901 *et seq.*) encourages federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats. In addition, the Fish and Wildlife Coordination Act (16 USC 661 *et seq.*) requires federal agencies undertaking projects affecting water resources to consult with the U.S. Fish and Wildlife Service and the state agency responsible for fish and wildlife resources. The analysis in Section 3.1, Fish and Wildlife, indicates impacts to fish and wildlife the alternatives would have. Provisions of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. *et seq.*) are intended to address system-wide fish and wildlife losses. This project is proposed to fulfill these obligations, as part of the Columbia River Basin Fish and Wildlife Program.

4.4 Discharge Permits under the Clean Water Act

The Clean Water Act regulates discharges into waters of the United States.

The Tribe and IDFG have obtained a short-term activity exemption (STAE) from the Idaho Department of Environmental Quality for the initial 12-week treatment period proposed- in lieu of a National Pollutant Discharge Elimination System (NPDES) permit and Section 401 of the Clean Water Act certification for the program. EPA would issue the NPDES permit and IDEQ the 401 certification for the next 4 years of treatment beginning in 2006 if the program is implemented. The Tribe and IDFG would comply with all EPA and IDEQ guidelines for discharges under the Clean Water Act.

The Army Corps of Engineers has indicated that no Section 404 permit is required because there will be no dredging or filling with the high-water mark.

The project proponents have obtained a 124 permit from the Montana Department of Fish, Wildlife and Parks.

The Idaho Department of Water Resources would issue a stream channel alteration permit for any type of work or activity in the river (including placement of 3-10 m feet of pipe).

4.5 Safe Drinking Water Act

The Safe Drinking Water Act (42 U.S.C. sec 300f et. seq.) is designed to protect the quality of public drinking water and its sources. The City of Bonners Ferry has an intake for its municipal water near rkm 247. The Kootenai River is a secondary source of drinking water for the City of Bonners Ferry, the primary source being Myrtle Creek. Water samples would be obtained weekly at pre-determined locations to monitor the desired nutrient concentrations. Comparisons of background water quality samples would be performed to determine the change in nutrient concentrations. The City of Bonners Ferry has requested that total organic carbon (TOC), in addition to the six water quality parameters sampled at other sites, be measured weekly at the city water intake. Temperature (°C), conductivity (mS/cm), salinity (ppt), total dissolved solids, dissolved oxygen (mg/L and % saturation), standard pH, barometric pressure (mm/Hg), nitrate (mg/L N), and ammonia (mg/L N), and blue-green algae (V or cells/mL) would be measured at the city water intake, and reported to the appropriate agencies (Hoyle, 2005). Treatment dilutions are well within safe water consumption standards (human) within 2m of the pipe (human standards are more conservative than for aquatic organisms). See Section 3.5.

4.6 Resource Conservation and Recovery Act

No hazardous materials would be used, discarded or produced by this project. Solid wastes would be disposed of at a landfill approved by the state of Idaho. If any leaks develop at the treatment site, the berm surrounding the treatment tanks would contain the liquid and it would be pumped to a non-leaking holding tank, then disposed of.

4.7 State, Areawide, and Local Plan and Program Consistency

Lincoln County, Montana does not have a comprehensive plan or zoning regulations for the treatment site. The treatment site is on unincorporated private rural timberland owned by DLC, Inc. (E1/2SW1/4SW1/4 of Section 17, Township 33 North, Range 34 West, Principle Meridian Montana as shown on Certificate of Survey No. 2800); and National Forest System Lands managed by the Kootenai National Forest (Government Lot #5 of Section 17, Township 33 North, Range 34 West, Principle Meridian Montana as shown on Certificate of Survey No. 2800). The use of the proposed equipment on the Kootenai National Forest would require a special use permit from the Forest Supervisor. The use is consistent with the current forest plan, no amendments to the forest plan are necessary. The Tribe and IDFG would work with the USFS while designing the facilities. A special use permit would be obtained.

The Idaho Department of Lands would issue a land easement to have the proposed pipeline enter Idaho state land within the high-water mark.

The Montana Department of Natural Resources has indicated that no land easement is required for work within the high-water mark in Montana.

4.8 Wetlands and Floodplains Protection

Discussion of wetland effects is provided in Section 3.6, Wetlands. Discussion of floodplain effects is provided in Section 3.7, Floodplains.

4.9 Recreation Resources

The proposed project would not affect Wild and Scenic Rivers, National Trails, Wilderness Areas, National Parks, or other specially designated recreational areas. Discussion of impacts to dispersed recreation is in Section 3.4.

4.10 Federal Insecticide, Fungicide and Rodenticide Act

Herbicides would not be used during project construction; however, herbicides may be used to prevent the spread of noxious weeds. The Tribe and IDFG would comply with all federal regulations regarding the use of herbicides, including application by trained applicators.

4.11 Heritage Conservation

Federal historic and cultural preservation acts include the National Historic Preservation Act (16 USC 470-470w-6), the Archeological Resources Protection Act (16 USC 470aa-470ll), the Archeological and Historic Preservation Act (16 USC 469-469c), the American Antiquities Act (16 USC 431-433), and the American Indian Religious Freedom Act (42 USC 1996). BPA has consulted with the Montana State Historic Preservation Office. The Montana State Historic Preservation Office has concurred with BPA's determination that the project would have no adverse effect on historic properties. See Section 3.8 for information about cultural resources. No impacts are expected from the alternatives.

4.12 Noise Control Act

See Section 3.11.

4.13 Clean Air Act

Open burning outside of city limits is allowed from October 1-April 30. During the fire season (May 1 – September 30), burning permits are required in Lincoln County. If cleared slash or trees are burned by the landowner, a county permit would be obtained.

4.14 Review, Consultation and Permit Requirements not Applicable to this Project

4.14.1 Stormwater Permit

A stormwater permit is required if the proposed ground disturbance is greater than 1 acre. Less than 1 acre of disturbance is proposed, so no stormwater permit is required (Ryan, January 2004). The Montana Department of Environmental Quality has indicated that a 318 Permit for activities that may temporarily increase turbidity is not required for the project.

4.14.2 Toxic Substances Control Act

No toxic substances would be manufactured or used on this project.

4.14.3 Energy Conservation at Federal Facilities.

Energy conservation practices are not relevant to the facilities proposed.

4.14.4 Farmland Protection Policy Act

The project would not affect any prime, unique or other important farmland as defined in the Farmland Protection Policy Act (U.S.C. 4201 et seq.).

4.14.5 The Executive Order on Environmental Justice

The project would not adversely affect minority or disadvantaged groups. No adverse effects on any human groups or individuals are expected. This project would have a positive impact for minority/disadvantaged tribal populations.